

RECORDATION NO. 6289 Filed & Recorded


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INTERSTATE COMMERCE COMMISSION

CERTIFICATION

STATE OF ARKANSAS)
) ss:
COUNTY OF SEBASTIAN)

On this 5th day of August, 1971, before me personally appeared J. F. Porter, III, to me personally known, who being by me duly sworn, says that he is the Vice President of Toltec Leasing, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

My Commission expires Sept. 25, 1972

EQUIPMENT LEASE

Subject to terms and conditions hereinafter set forth, TOLTEC LEASING, INCORPORATED, a corporation, Post Office Box 186, Fort Smith, Arkansas 72901, hereinafter called "Lessor," hereby leases to MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a corporation, hereinafter called "Lessee," the equipment described in the attached Exhibit A entitled "Schedule of Equipment and Rents," which schedule is incorporated herein by reference. It is agreed that this is a contract of leasing only, and that Lessee is renting the equipment herein leased for its own business use and is not for any purpose the agent of Lessor.

1. The term of this lease shall be for five years, commencing February 1, 1971, subject to Section 2 hereof.

2. Lessee agrees to pay Lessor the first year's rental on February 1, 1971, in advance, and subsequent years' rentals on each succeeding anniversary at the above address, or such other place as Lessor or its assignee may direct. The rental to be paid shall be the amount of yearly rental set forth in Exhibit A. At the end of the primary five-year term hereof the period of use by Lessee of each unit of equipment shall be adjusted according to the date of actual delivery thereof to Lessee, to permit a full year's use of each unit of equipment for each full year's rental paid.

3. Lessee shall, during the term of this lease, be solely responsible for and pay all operating costs and expenses incurred in connection with or incidental to, and maintain, service and repair (including replacements of worn out or broken parts) the equipment herein leased and shall at all times during the term of this lease keep said equipment in proper operating condition.

4. Lessee agrees that its agents have examined the leased equipment before taking possession thereof and that the same is in good, safe and serviceable condition; and agrees that said equipment, upon termination of this lease will be returned to Lessor in as good condition and running order as when received by Lessee, ordinary wear and tear excepted. Any loss of, or destruction or damage to said equipment during the term hereof, whether by theft, casualty or other cause, shall not relieve Lessee from its obligation to pay rentals herein provided.

5. Lessee agrees to indemnify and save harmless Lessor, its successors and assigns, from any and all liability, claims, demands, judgments, costs and expenses (including attorneys' fees) incurred by, asserted against, or imposed upon Lessor which in any manner arise out of the possession, use, operation or maintenance of any of said leased equipment by Lessee, its agents or employees.

6. In the event of default in the payment of any installment or rent when due, or if a petition in bankruptcy be filed by or against Lessee, or if Lessee makes an assignment for the benefit of creditors, or if Lessee defaults in any other covenant or condition of this lease, and such default continues for a period of ten (10) days after written notice by registered mail, posted and addressed to Lessee, Lessor may, at its option, either declare all remaining rental installments due and payable, and have the right to collect same as liquidated damages or Lessor may terminate this lease, enter upon any premises where said equipment may be found and repossess same, in which event all rights of the parties hereunder shall cease, except the obligation of Lessee to pay accrued rental to the date of repossession.

7. Lessor shall have the privilege of making periodic inspections of the leased equipment once every six (6) months for the purpose of ascertaining and reporting to the Lessee any improper operation or neglect by Lessee's employees.

8. Should markings be required to show ownership of said equipment Lessor shall be permitted to affix appropriate markings.

9. Lessee shall reimburse Lessor upon demand for sales and use taxes levied, assessed or imposed by reason of the purchase or use of the leased equipment, as well as sums paid for registration fees, if any, and ad valorem taxes incurred with respect to any period during the term of this lease. Lessor shall collect from Lessee sales or use taxes, if any, assessed on rentals and pay the same to the levying tax authorities.

10. Lessee shall comply with all laws, regulations, rules and orders of lawfully constituted authorities; and shall indemnify and hold harmless Lessor from any liability therefor or in connection therewith.

11. Title to the leased equipment is retained by Lessor, and Lessee covenants it will not mortgage, pledge or encumber the leased equipment or permit any liens to become effective thereon because of its possession and use thereof.

12. The Lessee, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with another and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Lessee, or over which it has trackage rights, and the equipment may be used also upon connecting and other railroads in the usual interchange of traffic, from and after delivery of the equipment to the Lessee, but only upon and subject to all the terms and conditions of this lease.

13. The parties hereto understand and agree that the equipment covered by this lease shall be auto racks now owned by Lessor and which are presently being leased by Lessor to Lessee.

The parties hereto further understand and agree that the Lessee has heretofore made, or will hereafter make, under the terms and conditions of superseded lease agreements, advance rental payments to the Lessor covering the same auto racks which will be modified and thereafter covered by this lease and that, at the time such auto racks are modified and incorporated herein, there may be prepaid time remaining on such auto racks under the superseded lease. The Lessor agrees that, in addition to the adjustment provided for in paragraph 2 hereof, at the end of the primary five-year term there shall be a further adjustment to permit the Lessee to utilize time previously paid for but not utilized under the superseded lease. The amount of such time shall be calculated and agreed upon at the time that each auto rack is modified and placed under the terms of this lease.

The purpose of this Equipment Lease is to provide a means to allow the equipment covered hereby to be improved and modified in several respects and then placed under the terms of a new lease, taking into account the

increased value of the racks subsequent to the modifications to be performed. The parties agree that the modifications to be made are described in Lessee's work order D-49945 (a copy of which is attached and by reference made a part hereof) which has been submitted to Leavenworth Steel, Inc. (hereinafter called "Leavenworth") for performance at its Coffeyville, Kansas, plant. The racks referred to herein are presently installed on railroad cars owned or leased by the Lessee and will be delivered by Lessee from time to time to Leavenworth at its Coffeyville, Kansas, plant for the performance of the modifications described in Lessee's work order D-49945. Such deliveries for modification shall be made as and when called for by either Lessor or Leavenworth. In the event Lessee is unable to so deliver the railroad cars and racks pursuant to its obligation under this paragraph because of strike, labor dispute, fire, or explosion, then the obligation of Lessee to furnish the cars and racks shall be suspended as long as and to the extent that such cause delays the delivery of equipment to Leavenworth. Lessee further covenants and agrees that it will, at the time of delivery of the aforesaid railroad cars and racks to Leavenworth, furnish Leavenworth with written authority from the owner of the railroad cars and racks, for the modification of the equipment described herein.

14. This instrument constitutes the entire agreement between both parties and shall be binding on each of them, their successors and assigns.

15. This Equipment Lease shall be construed under the laws of the State of Arkansas.

IN WITNESS WHEREOF the parties hereto have executed this lease at Fort Smith, Arkansas, this 15th day of January, 1971.

TOLTEC LEASING, INCORPORATED

By J. F. Porter III
V. President LESSOR

ATTEST:

Margaret L. Lamm
Secretary

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By D. R. Bishop
LESSEE

ATTEST:

[Signature]
Assistant Secretary

EXHIBIT "A"

SCHEDULE OF EQUIPMENT AND RENTS

Rental for the following described leased equipment shall be in accordance

with Schedule A:

DESCRIPTION OF PROPERTY

24 Toltec Tri-level automobile loading racks
as modified under Lessee's work order no. D-49945
dated December 4, 1970

(Lease rental based on delivery at Leavenworth's
plant in Coffeyville, Kansas.)

SCHEDULE "A"

First year rental, payable in advance on February 1, 1971	\$ 27,554.00
Second year rental, payable in advance on February 1, 1972	\$ 27,554.00
Third year rental, payable in advance on February 1, 1973	\$ 27,554.00
Fourth year rental, payable in advance on February 1, 1974	\$ 27,554.00
Fifth year rental, payable in advance on February 1, 1975	\$ 27,554.00